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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/548,707	04/13/2000	Christopher J. Scott Dougall	P966	6702
24394	7590	02/12/2004	EXAMINER	
LARIVIERE, GRUBMAN & PAYNE, LLP			NAJJAR, SALEH	
19 UPPER RAGSDALE DRIVE			ART UNIT	PAPER NUMBER
SUITE 200			2157	
MONTEREY, CA 93940			DATE MAILED: 02/12/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/548,707	DOUGALL, CHRISTOPHER J. SCOTT
Examiner	Art Unit	
Saleh Najjar	2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED' (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 18 November 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-6 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) 7-10 are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). ____ .
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ . 6) Other: ____ .

1. This action is responsive to the Request for Continued Examination filed November 18, 2003. The After Final Amendment filed October 14, 2003 was entered. Claims 1, 6, and 7 were amended. Claims 1-20 are pending.

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-6, drawn to computer to computer data streaming, classified in class 709, subclass 231.
- II. Claims 7-20, drawn to computer-to-computer data framing, classified in class 709, subclass 236.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because Claims 1-6 deal with scheduling and transmitting broadcast streaming data for storage in a client computer. The subcombination has separate utility such as grouping data into a specified arrangement in order to transfer the grouped data between the computers.

During a telephone conversation with Robert E. Kasody (Reg. No. 50,268) on February 6, 2004, a provisional election was made with traverse to prosecute the invention of group I, claims 1-6. Applicant in replying to this Office action must make affirmation of this election. Claims 7-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U. S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371 (c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U. S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Payne et al. U.S. Patent No 6,021,433 (*previously submitted by the applicant as prior art*).

Payne teaches the invention as claimed including a system and method for transmission of data (see abstract).

As per claim 1, Payne teaches a broadcast system, said broadcast system comprising:

a server-end means for scheduling, gathering and transmitting an entire digital database content of at least one type of digital information service, said server-end means having means for encoding said full-digital data content for being broadcasted (see fig. 1; col. 5, Payne discloses that information source servers 12 schedules and gathers data for broadcast); and

a client-end means for decoding -and receiving the broadcasted full-digital database content and providing the full informational content of said at least one type of digital information services, wherein said client end means selects which full digital database content to receive, wherein said full digital content is continuously received by a broadcast receiver and is stored in a client local storage unit (see fig. 1; col. 6-7,

Payne discloses a client end system having a viewer for decoding the selected content to be viewed), ,and

wherein said full digital database content includes redundant packets that repair data losses due to transmission errors (see col. 9, lines 50-65; col. 15, Payne discloses that redundant data packets are transmitted for transmission error correction).

As to claim 2, Payne teaches a broadcast system as described in claim 1, wherein:

said server-end means further comprises communication means for facilitating transmission of said entire digital database content via IP-Multicast, RS422, RS232, and TCP/IP type of communications links for further broadcasting via conduits selected from a group of conduits consisting of television VBI, radio subcarrier, Digital Satellite System (DSS), Digital Video Broadcasting (DVB), MPEG-2, local area networks, paging networks, telephone networks and the Internet (see fig. 2-3; col. 6-9; col. 11).

As to claim 3, Payne teaches a broadcast system as described in claim 1, wherein:

said means for encoding comprises a packet construction means for breaking up an original digital file into smaller digital file pieces and transmitting said smaller digital file pieces as a stream of packets; and wherein said client-end means comprises broadcast data receiving means for reassembling said stream of packets into said original file (see col. 9-10).

As to claim 4, Payne teaches a broadcast system as described in claim 1, wherein:

said server-end means further comprises means for retrieving and storing an entire digital informational content of a selected electronic network site (see fig. 1-3; col. 6-9).

As to claim 5, Payne teaches the a broadcast system as described in claim 1, wherein: said server-end means further comprises a means for providing a program guide of services for use by a user, said program guide facilitating means for selecting

which services to receive (see fig. 24; col. 25-28; col. 30, lines 35-50, Payne discloses that a program guide is provided to the client for selectively receiving digital content).

As to claim 6, Payne teaches a contents-based digital data broadcast system, said system comprising:

a first server-end application program means for retrieving a first type of digital information, and storing a. entire contents of said digital information locally (see fig. 1; col. 7-8, Payne discloses that mirror servers 26 store the information for transmission to server 134);

a first server-end application module means for encoding, transmitting scheduled services including said entire contents of said digital information, said first application module comprising means for supporting UP-Multicast, and TCP/IP, RS422, RS232 communications and means for broadcasting said encoded entire contents of said digital information via conduits that comprise television, VBI, radio subcarrier, Digital Satellite System (DSS), Digital Video Broadcasting (DVB), MPEG-2, local area networks, paging networks, telephone networks and the Internet (see fig. 2; col. 8-9, Payne discloses that server 34 prepares the information for transmission over a variety of communication channels);

a second server-end application module means for scheduling tasks for external modules; facilitating centralized organization of tasks and services provided to a client (see fig. 2; col. 8, lines 25-45, Payne discloses that the content manager organizes and schedules information transmission to the client based on preferences of the client);

a second server-end application program means for issuing and responding to remote commands and reporting on a status of a task to remote modules (see figs. 1, 10; col. 22-col. 26, Payne discloses a server design 18 that includes viewer server 58 and communication server 38 that transmit content based on client feed back information through user viewer interface);

a first client end application program selecting said first type of digital information to transmit (see col. 21, lines 20-45, Payne discloses a client based filtering application that chooses which content to transmit);

a first client-end application program means for decoding and receiving continuously by a broadcast receiver the full content of said broadcasted encoded digital information, and said first client storing locally said said first type of digital information on a first client storage device (see figs. 1-10; col. 8-10; col. 27-28, Payne discloses client viewers for decoding and receiving continuously the content); and

a second client end application program guide means for facilitating selection of which service to receive, viewing a schedule of incoming services, and review of a catalog of what services have been received, said program guide means further providing a rotating information banner (see col. 23, lines 30-35; col. 27-28, Payne discloses an alert panel for displaying fly in graphics for displaying messages and a program guide);

wherein said broadcast receiver continuously receives the full content of said broadcast encoded digital information independent of said second client end application program guide operation (see col. 23-32; Payne discloses that the messages are transmitted to the client independent of the client program guide application).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saleh Najjar whose telephone number is (703) 308-7613. The examiner can normally be reached on Monday-Friday from 6:30 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Ario Etienne*, can be reached on (703) 308-7562.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600. The central official fax number for the group is (703) 872-9306.



Saleh Najjar

Primary Examiner / Art Unit 2157